IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 482 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

==========

PATEL PARSHOTTAMBHAI DEVJIBHAI - Applicant(s)
Versus
THE STATE, & 3 - Respondent(s)

==========

Appearance :
MR BM MANGUKIYA for Applicant(s) : 1,MS BELA A PRAJAPATI for Applicant(s) : 1,
MR M.R.MENGDEY, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.
MR NIRAV C THAKKAR for Respondent(s) : 4,

==========

CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 05/07/2007

ORAL JUDGMENT

1. ***Rule.*** By way of this petition, under Article

226 of the Constitution of India, the petitioner – original complainant has prayed for an appropriate Writ, order or direction directing the respondents to record complaint given by the petitioner as First Information Report against Shri Rana, P.S.I. Muli, Police Station and further directing the respondents to investigate the said F.I.R. against said Shri Rana, by Superior Officer who should not be holding the post less than the Deputy Superintendent of Police.

2. Mr. Mangukiya, learned Advocate appearing on behalf of the petitioner has submitted that when the petitioner had approached the respondents to record the complaint given by the petitioner as F.I.R., it was the bounded duty of the concerned Police Officer to record the complaint given by the petitioner. It is submitted that as the allegations are against the P.S.I., Muli Police Station, in the facts and circumstances of the case, it will be appropriate to direct, investigation to be carried out by the Superior Officer not below the rank of Deputy Superintendent of Police. It is submitted that as the petitioner has submitted before the CPI that he would like to move appropriate complaint before the

Magistrate, further investigation is not carried out, Mr. Mangukiya, learned Advocate has submitted looking to the conduct of the Investigating Officer, more particularly, when the complaint was against the PSI, the said statement was made.

3. Mr. Nirav Thakkar, learned Advocate appearing on behalf of PSI- Muli Police Station, respondent No.4 – has submitted that when the concerned Police Officer was trying to investigate the complaint submitted by the petitioner, the petitioner himself has submitted that he would like to file private complaint before the concerned Magistrate. Therefore, it is not open for the petitioner to make a grievance that the respondents are not investigating the complaint and /or registering the complaint as F.I.R. He has submitted that instead of filing private complaint, he has filed the present petition for aforesaid relief which should be condemned and the petitioner is not entitled to any discretionary relief looking to the conduct of the petitioner.

4. Shri Mengdey, learned Additional Public Prosecutor has submitted to pass an appropriate order.

5. Heard the learned Advocates appearing on behalf of the respective parties.

6. Considering the fact that the petitioner has submitted the complaint making allegations of cognizable offence and when the allegations are against the Police Officer, it will be desirable if the investigation is carried out by the Superior Officer not below the rank of Deputy Superintendent of Police to avoid any further allegations of *Mala-fide*. Justice is not to be done but appears to have been seen done also. Under the circumstances, without entering into any further controversy, allegations and the counter – allegations, this Court is of the opinion that as the complaint is against the P.S.I., it is in the fitness of things and desirable that the said complaint be investigated by the Deputy Superintendent of Police, Surendranagar.

7. Under the circumstances, Deputy Superintendent of Police, Surendranagar is directed to look into the complaint and inquire into the same and if he is satisfied that such information /

complaint discloses commission of cognizable offence, shall investigate the case himself. The said exercise shall be done within a period of 4(four) weeks from the date of receipt of this order. It is however, made clear that this Court has not expressed any opinion on merits with regard to the allegations in favour of either parties. This Court is only directing the Deputy Superintendent of Police, Surendranagar to look into the complaint and inquire into the same and if cognizable offence is made out, then to hold investigation himself. Rule is made absolute to the aforesaid extent. Direct service is permitted.

[M.R.Shah, J.]

satish